

EXHIBIT D

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

Blue Spike, LLC,

Plaintiff,

V.

Audible Magic Corporation,

Defendant.

Audible Magic Corporation,

Counterclaim Plaintiff

V.

Blue Spike, LLC, Blue Spike, Inc. and
Scott A. Moskowitz

Counterclaim Defendants.


PLAINTIFF AND COUNTERCLAIM DEFENDANT'S TRIAL WITNESS LIST

Plaintiff Blue Spike, LLC and Counterclaim Defendants Blue Spike, LLC, Blue Spike, Inc., and Scott Moskowitz, pursuant to the Court's Trial Preparation Order entered in this case, files this Trial Witness List for identification and categorization of trial witnesses.¹

¹ The Court has not yet had an opportunity to rule upon Blue Spike's pending objection to the Report and Recommendation of no infringement of the patents-in-suit asserted by Blue

At this time, Plaintiff and Counterclaim Defendants identify the following witnesses for trial:

	Witness	Brief Narrative Summary	Expected Duration (Direct & Cross-Exam)	Deposed (Y/N)	Will Call	May Call	May, but Prob. Not Call
1	Thomas Blum 985 University Ave., Ste. 35 Los Gatos, CA 95032	Operation of the accused products; History of Audible Magic and Muscle Fish	50 min. Deposition Designations]	Y	X		
2	Rodney Bosco 4350 N. Fairfax Dr. Ste. 830 Arlington, VA 22203	Damages and rebuttal testimony regarding damages	45 min.	Y	X		
3	Floyd B. Chapman 1776 K Street NW Washington, DC 20006	Prosecution of patents-in-suit	1 hr	N		X	
4	Curtis Dowdy 985 University Ave., Ste. 35 Los Gatos, CA 95032	Operation of the accused products; marketing of the accused products; Audible Magic's counterclaims	1 hr Deposition Designations]	Y		X	
5	Vance Ikezoye 985 University Ave., Ste. 35 Los Gatos, CA 95032	Operation of accused products; history of Audible Magic	2 hr [Deposition Designations]	Y	X		
6	Douglas Keislar 985 University Ave., Ste. 35 Los Gatos, CA 95032	Operation of the accused products; History of Audible Magic and Muscle Fish	20 min [Deposition Designations]	Y	X		
7	Bruce Margulies 4813-B Eisenhower Ave. Alexandria, VA 22304	Prosecution of patents-in-suit	30 min	N		X	
8	Scott Moskowitz To be contacted through counsel at	Technology conception, and development of the	3 hr	Y	X		

	Garteiser Honea.	process of the patents-in-suit; prosecution of the patents-in-suit; licensing of the patents-in-suit; Audible Magic's counterclaims					
9	Richard Neifeld 4813-B Eisenhower Ave. Alexandria, VA 22304	Prosecution of patents-in-suit	30 min	N		X	
10	Yannis Papakonstantinou, Ph.D. Department of Computer Science and Engineering UC, San Diego 9500 Gilman Dr, Office 3248 La Jolla, CA 92093	Rebuttal testimony to Audible Magic's defenses and counterclaims regarding the invalidity of the claims of the patents-in-suit and puffery in the scientific community	2 hr	Y	X		
11	Jim Schrempp 985 University Ave., Ste. 35 Los Gatos, CA 95032	Operation of the accused products; History of Audible Magic and Muscle Fish; Audible Magic's counterclaims	50 min [Deposition Designations]	Y	X		
12	John Strawn, Ph.D. 	Operation of the accused products; Audible Magic's counterclaims.	30 min [if needed for rebuttal, deposition designations to be provided]	Y		X	
13	Ahmed Tewfik, Ph.D. Electrical and Computer Engineering University of Texas at Austin Attn: Ahmed Tewfik	Audible Magic's infringement of the patents-in-suit, and puffery in the scientific community; Audible Magic's counterclaims.	2 hrs	Y	X		

	1616 Guadalupe, UTA 7.416 Austin, TX 78701						
14	Jim Wheaton 985 University Ave., Ste. 35 Los Gatos, CA 95032	Operation of the accused products; History of Audible Magic and Muscle Fish; Audible Magic's counterclaims.	30 min [Deposition Designations]	Y		X	
15	Erling Wold 985 University Ave., Ste. 35 Los Gatos, CA 95032	Operation of the accused products; History of Audible Magic and Muscle Fish; Audible Magic's counterclaims.	30 min [Deposition Designations]	Y	X		
16	Mike Berry (To be Contacted through his Counsel at Farella Braun in S.F.)	Counterclaims by Audible Magic.	30 min [Deposition Designations]	Y	X		
17	Donna Lekosky (Audible Magic Employee)	Revenue of Audible Magic	30 min [Deposition Designations]	Y	X		
18	Alan Edel (Audible Magic Employee)	Authentication of Audible Magic Source Code modifications via Subversion and SourceSafe.	30 min.	N		X	
19	Peter Nguyen (Audible Magic Employee)	Authentication of Audible Magic Source Code modifications via Subversion and SourceSafe.	30 min.	N		X	
20	Ph.D. Quackenbush (Audible Magic Expert)	Rebuttal only	[Via deposition designations to be provided, if needed]				

By May 28, 2016, Blue Spike needs confirmation from Audible Magic as to whether it will authenticate its Subversion and SourceSafe production related documents to avoid calling Peter Nguyen and Alan Edel to Court to do so.²

Respectfully submitted,

/s/ Randall Garteiser
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Attorneys for Blue Spike, LLC

² Blue Spike reserves the right to call rebuttal witnesses and any witness off Audible Magic's Witness List.

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this document was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Federal Rule of Civil Procedure 5(d) and Local Rule CV-5(d) and (e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by email.

/s/ Randall Garteiser

Randall T. Garteiser